

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DENNIS E. JONES

Petitioner,

v.

Case No. 00-C-0130

WILLIAM POLLARD

Respondent.

ORDER

Petitioner Dennis Jones moves for a temporary restraining order directing respondent William Pollard to return petitioner's legal files. Petitioner states that he needs the files to complete a new habeas corpus petition.

This case, No. 00-C-130, was a habeas action. On February 21, 2003, I conditionally granted petitioner's application for a writ, finding that he had been deprived the assistance of counsel in his direct appeal. Jones v. Berge, 246 F. Supp. 2d 1045 (E.D. Wis. 2003). In response, the state appointed counsel for petitioner and resurrected his direct appeal, which was resolved adversely to him. State v. Jones, No. 2004AP1593-CR, 2006 Wisc. App. LEXIS 294 (Wis. Ct. App. Apr. 5, 2006), rev. denied, 2006 Wisc. LEXIS 596 (Wis. July 25, 2006). On August 21, 2006, I denied petitioner's motion for an order granting his immediate release based on the state's alleged violation of the conditional order. (R. 98.) Petitioner now apparently wants to file a new habeas petition and states that he needs his confiscated files to do so.

I lack jurisdiction to order petitioner's custodian to return petitioner's files in this (concluded) habeas case. If petitioner believes that his prison custodian is violating his constitutional rights he should file a new civil case. See Preiser v. Rodriguez, 411 U.S. 475,

499-500 (1973) (stating that habeas corpus actions are used to challenge the fact or duration of confinement, while § 1983 actions are used to challenge the conditions of confinement).

THEREFORE, IT IS ORDERED that the motion (R. 99) is **DISMISSED**.

Dated at Milwaukee, Wisconsin, this 4th day of April, 2007.

/s Lynn Adelman

LYNN ADELMAN
District Judge